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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,528	03/01/2004	Mark Dickstein	REL-8403	3371

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EXAMINER
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HUYNH, KHOA D

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 04/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/791,528

Applicant(s)

DICKSTEIN, MARK

Examiner

Khoa D. Huynh

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-26 and 28-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 and 28-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 3/1/04 & 5/25/05 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Drawings*

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the form of adhesive patch cover a whole area of the bottom of the liner as recited in claim 5, and the liner having no sidewalls as recited in claim 25 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-7, 20, 21, 24, 25, 26, 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mansfield (246171) in view of Henry (2319603).

Regarding claim 1, the Mansfield reference discloses a disposable bathtub mat or liner (Fig. 1). The liner, as schematically shown in Figure 1, includes a liner having an exterior side, an interior side (A), a bottom and sidewalls (a) and is being removably disposed in the bathtub.

The Mansfield reference DIFFERS in that the liner does not specifically include a fastener as claimed. Attention, however, is directed to the Henry reference which also discloses a liner (7) for a bathtub. The liner includes a fastener (at 8-10 or 24-27) located on the exterior side of the liner for attaching the liner to the bathtub. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Asack et al. reference by employing a fastener, in view of the teaching of Henry, in order to attach the liner to the wall of the bathtub and hold it in place so that the liner would not slip during use.

Even though the Mansfield reference does not specifically disclose that the sidewalls of the liner being less than 2 inches high as claimed, it would have

been obvious to one of ordinary skill in the art at the time the invention was made to recognize that the sidewalls of the Mansfield liner is less than 2 inches in high since the Mansfield reference also discloses that the sidewalls rise slightly above the liner (lines 24-25).

Regarding claim 2, it is inherent that the liner is being removed from the bathtub by disengaging the fastener from the bathtub.

Regarding claim 3, the modified Mansfield reference also DIFFERS in that it does not specifically disclose that the fastener is an adhesive having an adhesive cover as claimed. Attention, however, is also directed to the Henry reference which further discloses that the adhesive strip (at 8-10 or 24-27) having a cover (at 11), wherein at the time of applying the liner to the bathtub, the cover is pulled away from the tacky surface of the adhesive and the liner can be adhesively connected to the bathtub. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the modified Mansfield reference by employing a cover for the adhesive, in view of the teaching of Henry, in order to maintain the adhesive in a tacky condition and protect the adhesive from dirt until time for installing the liner.

Regarding claim 4, the adhesive is in a form of adhesive strips disposed spaced apart on the exterior side of the liner (in Henry, elements 8-10 or 24-27).

Regarding claim 5, the adhesive is in a form of adhesive patch that is obviously capable of being disposed to cover the whole area of the bottom of the liner, if so desired, so that the liner will be held in place better during use.

Regarding claim 6, the modified Mansfield reference also discloses that at least one of the adhesive strips extends beyond the liner for attachment to the bathtub (Henry, page 1, left col., lines 49-54).

Regarding claim 7, the modified Mansfield reference also discloses that the liner is made of a water-proof or water impervious material (Mansfield, lines 9-10 and lines 33-35). Therefore, the bottom of liner is obviously included a water impervious material.

Regarding claims 20 and 21, the modified Mansfield reference DIFFERS in that it does not specifically disclose that the liner is less than 1/32 and 1/64 inches thick as claimed. It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ such thickness for the liner since discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Claim 24 recites limitations similar to the limitations of claims 1 and 3 which have been rejected as discussed supra.

Claim 25 (as best understood) recites limitations that are substantially similar to the limitations of claim 1 which has been rejected as discussed supra.

Regarding claim 26, as schematically shown in Figure 1, the liner appears to have a rectangular shape.

Claim 29 recites limitations that are substantially similar to the limitations of claim 3 which has been rejected as discussed supra.

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Claim 30 recites limitations that are substantially similar to the limitations of claim 4 which has been rejected as discussed supra.

3. Claims 8-10, 16-18, 19 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Mansfield (as discussed supra) in view of Spier (3133292).

Regarding claim 8, the modified Mansfield reference also DIFFERS in that it does not specifically include a mat as claimed. Attention, however, is also directed to the Spier reference which discloses a liner assembly for bathtubs. The modified liner is formed of a water impervious material (col. 2, lines 29-30 of Spier) defining the exterior side of the liner and a foam layer or mat (at 40 of Spier) disposed on at least part of the water impervious material defining the bottom (Fig. 2 of Spier). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the modified Mansfield reference by forming a bottom layer of the liner with an impervious material and providing a mat, in view of the teaching of Spier, to provide a liner that is capable of holding water and providing a cushion to a user during use.

Regarding claim 9, as schematically shown in Figures 2 and 3, the water impervious layer (at 36 of Spier) fully encloses the mat in a sandwich type format (the mat sandwiched between the ends of the layer 26).

Regarding claim 10, the water impervious surface has a roughed surface (at 38 of Spier) for providing anti-slippage properties.

Regarding claim 16, the liner further includes a surface with decorative pattern (col. 2, lines 26-29 of Spier).

Regarding claim 17, the modified Mansfield reference DIFFERS in that it does not specifically disclose a surface with animal shapes as claimed. It would have been obvious to one of ordinary skill in the art at the time the invention was made to emboss such surface with animal shapes since it is well within the general skill of a worker in the art to select a preferred interactive surface with picture of animal or cartoon characters on the basis of its suitability for its intended use as a matter of obvious engineering choice. *In re Leshin*, 125 USPQ 416.

Regarding claim 18, the sidewalls are also formed from the water impervious material (Fig. 3 of Spier) but do not include the mat.

Regarding claim 19, the water impervious material is a plastic (col. 2, lines 19-26 of Spier) and the mat is formed of a foam rubber or sponge material (col. 2, line 20-22 and 35-40 of Spier). The modified Mansfield reference also discloses that the water impervious material is flexible, therefore, the liner is obviously capable of being folded, rolled up for compact storage.

Regarding claim 28, the modified Mansfield reference also DIFFERS in that it does not specifically include a hole for drainage as claimed. Attention, however, is also directed to the Spier reference which discloses a liner assembly for bathtubs. The liner has a hole (45) formed therein functioning as a drain. Therefore, it would have been obvious to one of ordinary skill in the art at the



time the invention was made to have modified the modified Mansfield reference by employing a hole (if not already) functioning as a drain, in view of the teaching of Spier, to provide a convenient water drain to empty the used water before the liner can be removed.

4. Claims 11-13 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Mansfield (as discussed supra) in view of Bleicher (5465436).

Regarding claim 11, the modified Mansfield liner also includes a hole formed therein in the area of the drain. The modified Mansfield reference DIFFERS in that it does not specifically include a drain cover as claimed. Attention, however, is directed to the Bleicher reference which discloses another liner (10) for a bathtub. The liner includes a drain hole (32) and a drain cover (36). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the modified Mansfield reference by employing a drain cover (if not already) for the drain hole of the liner, in view of the teaching of Bleicher, so that water can be hold in the liner for bathing purposes.

Regarding claims 12, 13 and 22, the modified Mansfield reference also DIFFERS in that it does not specifically include a ripcord disposed around the hole as claimed. Attention, however, is also directed to the Bleicher reference which discloses a ripcord (40) connected to the drain cover and disposed around the circumference of the hole (Fig. 7A, 7B). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to

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have modified the modified Mansfield reference by employing a ripcord, in view of the teaching of Bleicher, in order to allow the user to open the drain hole to drain water without coming into contact with the used water in the bathtub.

5. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Mansfield (as discussed supra) in view of Lotis (4047259).

Regarding claims 14 and 15, the modified Mansfield reference DIFFERS in that it does not specifically include a dispenser as claimed. Attention, however, is directed to the Lotis reference which discloses a mat or liner (10) for a bathtub. The mat or liner includes a soap container or dispenser (14) attached to the side of the mat or liner. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the modified Mansfield reference by employing a dispenser attached to the liner, in view of the teaching of Lotis, to provide a convenient soap dispensing location for the user during bath.

6. Claim 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Mansfield (as discussed supra) in view of Roesler et al. (DE 4119949).

Regarding claim 23, the modified Mansfield reference DIFFERS in that it does not specifically disclose that the liner is coated with a material as claimed. Attention, however, is directed to the Roesler et al. reference which discloses a mat or liner for use in showers and baths. The liner is treated with a coat of antimycotic substance that is water activated. The liner also includes other substances such as dyes and/or perfumes (Abstract). Therefore, it would have

been obvious to one of ordinary skill in the art at the time the invention was made to provide a coat for the modified Mansfield liner to include material such as dyes, perfumes, anti-mycotic substance, i.e. soap and so on, in view of the teaching of Roesler et al., to provide a layer of protection for the user while using the liner.

***Response to Amendment***

7. Applicant's amendment, filed on 12/12/05, to the pending claims is insufficient to distinguish the claimed invention from the cited prior art or overcome the rejections as discussed above.

***Response to Arguments***

8. Applicant's arguments filed on 12/12/2005 with respect to the pending claims have been fully considered. However, they are deemed not persuasive.

Applicant asserts that the Asack reference is a design patent and does not teach a liner having sidewalls of less than 2 inches as claimed. See Remarks section.

Nevertheless, such assertions are now moot in view of the new grounds of rejection rejected under 35 U.S.C. 103(a) as being unpatentable over Mansfield. (246171) in view of Henry (2319603) as discussed supra.

Also applicant's arguments with respect to claims 1-26 and 28-32 have been considered but are moot in view of the new grounds of rejections and objections as discussed above.

***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa D. Huynh whose telephone number is (571) 272-4888. The examiner can normally be reached on M-F (7:00-3:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Khoa D. Huynh  
Primary Examiner  
Art Unit 3751

03/30/2006